



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 30, 1996

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-1792

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 101161.

The City of Houston (the "city") received a request for various information from an unsuccessful applicant for employment with the city's fire department. You assert that information the city obtained concerning the applicant's prior employment is excepted from required public disclosure based on section 552.101 of the Government Code.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

You are concerned about the privacy rights of the references who provided information about the applicant's employment history to the city. You are concerned about the possibility that these references will be subjected to retaliation or harassment as a result of the disclosure of the information to the requestor. You also express concern that references will be unwilling to provide information about applicants for employment with the city's fire department if those references know that such information is subject to public disclosure.

Although we believe your concerns about the disclosure here are valid, we do not believe that the test for violation of the common-law right to privacy is met here. Even though a reasonable person may object to its release, the information does not concern the references' private affairs. We therefore cannot conclude that the information is excepted from public disclosure based on section 552.101 of the Government Code.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo". The signature is fluid and cursive, with the first name "Kay" being more prominent.

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 101161

Enclosures: Submitted documents

cc: Mr. Carl W. Howard
3427 Avenue K
Santa Fe, Texas 77510
(w/o enclosures)